

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

THERESA KELLY,)	
)	
Plaintiff,)	
)	Case No.: 3:20-cv-342-JPG
v.)	
)	
ROBERT WILKIE, SECRETARY OF)	
VETERANS AFFAIRS,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter comes before the Court on the Court's March 18, 2021, order for plaintiff Theresa Kelly to show cause (Doc. 31) at the scheduling conference held today why the Court should not dismiss this case for failure to obey a Court order and/or for lack of prosecution pursuant to Federal Rule of Civil Procedure 41(b) and the Court's inherent authority to manage its docket. *See In re Bluestein & Co.*, 68 F.3d 1022, 1025 (7th Cir. 1995). The Court had earlier ordered Kelly to have new counsel enter an appearance or to notify the Court she will be proceeding pro se within 21 days of withdrawal of her retained counsel. It further ordered her to appear in person at the scheduling conference. It warned her in that order (Doc. 30) and in the show cause order (Doc. 31) that if she failed to attend the scheduling conference in person as ordered, the Court would dismiss this case.

Kelly did not appear at the scheduling hearing held this morning. Instead, she emailed the Court at 7:56 a.m. stating she was ill and unable to get to the courthouse. Attached to her email is a letter dated February 26, 2021, from a nurse practitioner stating that because of Kelly's medical issues she was unable to pursue her current legal action and that she was not able to fully comprehend the legal system or participate because she could not sit or stand for long periods of

time.

The Court has discretion to dismiss a suit for lack of prosecution. *Sroga v. Huberman*, 722 F.3d 980, 982 (7th Cir. 2013). However, it should not do so immediately after the first problem occurs and without exploring other potentially effective options. *Id.* The plaintiff should also have warning that the Court is considering dismissal. *Id.*

The Court exercises its discretion to dismiss Kelly's lawsuit for failure to prosecute, as it warned her twice it might do. Considering (1) her failure to notify the Court within 21 days after counsel's withdrawal whether counsel would appear or she would continue *pro se*, (2) her failure to appear in Court this morning as ordered, and (3) her email indicating she was unable to pursue this litigation, the Court concludes that Kelly no longer wishes to prosecute this case at this time. Accordingly, the Court **DISMISSES** this case **without prejudice** for lack of prosecution pursuant to Rule 41(b) and the Court's inherent authority to manage its docket. *See In re Bluestein & Co.*, 68 F.3d at 1025. The Court **DIRECTS** the Clerk of Court to enter judgment accordingly.

The Court **DIRECTS** the Clerk of Court to send a copy of this order and the judgment to Dr. Kelly at 1436 Allen Road, Herrin, Illinois 62948, and at 14376 Allen Road, Herrin, Illinois 62948.

IT IS SO ORDERED.
DATED: March 23, 2021

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE